

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.01.2018

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
&
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.31739 of 2017
and W.M.P.No.34882 of 2017

S.Ravichandran

... Petitioner

Vs.

1.The District Judge,
Tiruvannamalai District.

2.The Chief Judicial Magistrate,
Tiruvannamalai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, calling for the records in VeeDvee No.6181/2017 dated 23.10.2017 on the file of the 1st respondent and quash the same and direct the 1st respondent herein to appoint the petitioner to the post of Office Assistant in the office of the 1st respondent pursuant to his application No.10129 dated 20.06.2017.

For Petitioner : Mr.V.Kannan

For Respondents : Mr.D.Kanaga Sundaram

O R D E R

(Order of the Court was made by RAJIV SHAKDHER, J)

1.This is a writ petition, whereby, a direction is sought qua the respondents to call for the records in VeeDvee No.6181/2017, dated 23.10.2017, which is on the file of respondent No.1 and quash the same. A further direction is sought that respondent No.1, be called upon to appoint the petitioner as Office Assistant (in short "OA"), pursuant to application No.10129, dated 20.06.2017, preferred by the petitioner.

2. It may be relevant to note that this is a second round of litigation. The petitioner had approached this Court in the

first round, when the aforementioned application of the petitioner, for being appointed as OA, was rejected, on the ground that it had not been appropriately filled up. Being aggrieved, the petitioner had filed a writ petition under Article 226 of the Constitution. The said writ petition was numbered as: W.P.No.18957 of 2017. This writ petition was allowed vide judgment dated 12.09.2017. The operative directions, which were issued in the matter, are contained in paragraph No.6 to 10 of the judgement. For the sake of convenience, the same are set forth hereafter:

"6. Having regard to this information, what we need to consider is : Could respondent No.1 have rejected the petitioner's applications on the ground that they were defective ?

7. As indicated above, two applications were filed. The first application bearing no.9560 was rejected on the ground that it was not made in the proper format, whereas application No.10129 was rejected on the ground that the petitioner had not indicated as to which, religious denomination, he belonged to.

8. As indicated, hereinabove, the information sought in the formatted application, insofar as the second application was concerned, is to the effect that the applicant was required to state either his nationality or his religious denomination. The petitioner did indicate that he is an Indian, though no indication was given as to the religious denomination to which he belonged. Respondent No.1, however, rejected the application solely on the ground that the petitioner had not indicated his religious denomination.

9. To our minds, the rejection of the petitioner's second application, at least, was not proper. The reason being that the petitioner, as per the poser set out against query in row No.9 was required to either state his nationality or his religious denomination. According to us, the appraiser of the application failed to appreciate the rationale behind the information which was sought against row No.9. It is quite possible that the applicant, who applies for the post of an Office Assistant, does not subscribe to any religion and that, he could either be an agnostic or, a rationalist or, even an atheist. The fact that in the alternative, the applicant was asked to indicate his nationality, which the petitioner

did indicate in the instant case, to our minds, was sufficient and, therefore, the application could not have been rejected on that ground. Since, the rejection of the application was based on a wrong premise and understanding of the information sought, we are inclined to hold that the application No.10129 filed by the petitioner was maintainable.

10. We may not have been able to proceed any further, if there were no vacancies available. The fact that vacancies are available, as affirmed by the counsel for the respondents, we are inclined to direct the respondent No.1 to reconsider the petitioner's suitability for the post of Office Assistant in accordance with the extant Rules and Regulations. The needful will be done within two weeks of the receipt of a copy of this order. The writ petition is, accordingly, disposed of. Consequently, W.M.P.No.20462 of 2017 shall stand closed. No costs."

3. In accordance with the directions issued by the Court, respondent No.1, reconsidered the application of the petitioner. The petitioner was, accordingly, called for an interview. The Selection Committee, which comprised of the Chief Judicial Magistrate, Tiruvannamalai, the Principal Subordinate Judge, Tiruvannamalai and the Special Judge for MCOP Cases, upon interviewing the petitioner, came to the conclusion that he was not suitable. The counter affidavit filed on behalf of the respondents, demonstrates that the following marks were given by each of the Committee members to the petitioner.

SELECTION COMMITTEE MARK LIST.

Sl.No.	Applicant No.	Performance	Attitude	Technical Knowledge	Work knowing	General knowledge	Total
Thiru.R.Narja, Chief Judicial Magistrate, Tiruvannamalai.							
01	10129	3	1	2	2	2	11/50
Thiru.T.Munusamy, Principal Subordinate Judge, Tiruvannamalai.							
01	10129	2	1	3	2	2	10/50
Thiru.E.Bakthavachalu, Special Judge, To deal with MCOP cases, Tiruvannamalai.							
01	10129	2	1	2	3	1	9/50

4. Having regard to the wide width of topics, under which suitability of the petitioner was assessed, we were curious to know as to the nature of test the petitioner actually put to for assessing his suitability. The reason, we raised this query was that the counsel for the respondents was unable to tell us as to how technical knowledge, performance and attitude of the petitioner was assessed. Accordingly, the respondents were directed to file an additional counter affidavit. Pursuant to a direction, an additional counter affidavit has been filed by the respondents, along with which the report of the Selection Committee, which was sent to the Principal District Judge, Tiruvannamalai District has been appended. The relevant part of which is extracted hereafter:

"We humbly submit that the candidates for the post of Office Assistant have been selected through oral interview. During selection the technical qualifications like Plumbing, Electrical works, House Keeping and driving were also expected from the candidates, those were expected as an incidental or additional qualifications. But mainly, the candidates were tested on the basis of their behaviour, attitude, demeanor and with some basis knowledge for the post of Office Assistant. In such a way, the petitioner was asked with the question as to whether he knows about the compiling of papers, stitching of bundles, handling of records etc., for which the candidate specifically answered that he does not know about the same. Therefore the committee members considered that the petitioner did not possess knowledge about the basic services warranted for the post of Office Assistant.

We further submit that the way, in which the petitioner presented before us, the manner in which he answered to the questions, did appear that he was disobedient.

We humbly submit that when the candidate was asked about his experience as to driving, he answered that he knew to drive all kinds of vehicles and he has 9 years experience in the field of Driving both in Transport and Non-Transport vehicles. When we asked about the validity of his driving license with regard to Heavy vehicles, he said that he renewed his driving license both Light Motor vehicles and Heavy vehicles upto date. But on verification of his driving license in regard to Heavy vehicles, it revealed that his license for Heavy vehicles expired on 03.05.2016 itself. Similarly, on verification of his personal

records, it came to know that his Date of Birth varied between his Votor's Identity Card and his application. Thus the Committee was of the opinion that the said Candidate was untrustworthy and untruthful."

5. Having regard to what is extracted above, it is clear that for appointment of an OA, the Selection Committee expected the applicant i.e. the petitioner to have ability and talent for skills such as plumbing, electrical works, house keeping and driving, apart from the ability to compile papers, stitch bundles and handle records. In addition thereto, the Committee members also expected the applicant, i.e., the petitioner to possess knowledge about the basic services, which an OA is required to have to discharge of his duties. The array of qualifications and/or skill sets that the Selection committee expected an applicant, i.e., the petitioner to possess required him, according to us, to be a super hero. To expect one person, to know, plumbing, electrical works, house keeping and driving would be impossible, in our opinion, even for a person who would apply for jobs in levels above the O.A. To our minds, this is a near impossibility. The Selection Committee, to our minds, at the most expected the OA one of the many skills set forth above.

6. Given these circumstances, we had, ourselves, asked the petitioner, as to whether or not, he had any of the skills referred to above. The petitioner informed us that he had ability to drive a vehicle. Having regard to the response, we received, we asked the High Court Overseer to test the driving skill of the petitioner. We obtained information from the Overseer that the petitioner could, in fact, drive a motor vehicle as is expected from a person who is assigned such a job function. This matter has been touch upon by the Selection Committee. The Selection committee, however, has taken umbrage to the expiry of the license issued to the petitioner by the concerned transport authorities. It appears that the petitioner had informed the Selection Committee that he had nine (9) years experience in driving both transport and non-transport vehicles.

6.1. The Selection Committee, in its report, notes, that upon verification, they found that the license for heavy vehicles had expired on 03.05.2016. According to us, this would not demonstrate petitioner's lack of experience, if at all, it would show that the petitioner perhaps had experience, even though the license on the given date was not valid. The petitioner, in fact, had produced before us a license which shows that the license is valid, not only for non-transport vehicles, but also for transport vehicles.

6.2. Insofar as the Courts are concerned, especially, the Subordinate judiciary they have, if at all, a requirement of personnel who can drive non-transport vehicles. Therefore, in our opinion, the Selection Committee, has taken into account irrelevant aspects of the matter, while assessing the suitability of the petitioner.

6.3. There is another aspect with regard to the determination of the suitability of the petitioner. The Selection Committee has indicated in its report that, on verification of the petitioner's personal record it got revealed that his date of birth as mentioned in the Voter's Identity Card is different. Counsel for the respondents on being queried, informed us that the petitioner had in fact filed a Transfer Certificate (in short "TC") along with his birth certificate, which shows that his date of birth was 01.02.1990. This is the date, which the petitioner has, concededly, adverted to in the application as well. It is not unknown that enumerators while compiling data for the Election Commission often make clerical mistakes because of the vastness of data collected by them and therefore, the fact that the date of birth in the election card was mentioned as 04.07.1990 could not have gone against him had the Selection Committee taken the trouble of looking at the primary documents, which is TC and the birth certificate. It is well known that to ascertain the date of birth of the person, the primary documents are the school leaving certificate i.e., TC or the birth certificate. Other documents have only a secondary value. Therefore, this, by itself, could not have led the committee to come to an uncharitable conclusion that the petitioner was "untrustworthy and untruthful".

6.4. We are also surprised by the observations of the Selection Committee that the petitioner was "disobedient". We do not understand as to how, the Selection Committee could have come to such conclusion, which is, that the petitioner was disobedient, when he has not as yet entered the service.

6.5. The other aspect which the Selection Committee has adverted to is the inability of the petitioner to respond to queries as to whether, he was familiar with the exercise of compiling papers, stitching of bundles and handling records. This again is an aspect which an applicant, i.e., the petitioner in this case, can only learn after he enters service. The manner in which the papers are compiled and the records are handled in the judiciary, could not be known to any lay person, who has not been part of the judiciary. The Selection Committee according to us, has applied a yardstick, which is contrary to common sense.

6.6. As a matter of fact we did put some general knowledge questions to the petitioner, whereupon, we have come to the conclusion that the petitioner is reasonable well informed of the world around given his level of education exposure and background.

7. For all these reasons, we are satisfied that the petitioners suitability was wrongly ascertained and therefore, we are inclined to quash the impugned order.

7.1. In these circumstances, the Selection Committee is directed to reconsider the suitability of the petitioner and pass appropriate orders. For this purpose, the petitioner will present himself before the Selection Committee, on 31.01.2018. In case, the aforementioned date is not suitable for any purpose, the Selection Committee will fix another date, which would be proximate to the date given above, and accordingly, issue requisite written intimation to the petitioner via registered post (recorded delivery)

8. The writ petition is disposed of in the aforementioned terms. Consequently, the connected pending application shall stand closed. There shall, however, be no order as to costs.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

vsm

To

1.The District Judge,
Tiruvannamalai District.

2.The Chief Judicial Magistrate,
Tiruvannamalai.

+ 1 cc to Mr. V. Kannan, Advocate SR.2302

W.P.No.31739 of 2017

(CS-Dr.)
EU(29/01/2018)